REMARKS

Summary of the Response

No claims have been amended with the instant response. Accordingly, claims 15 – 34 remain pending and under consideration by the Examiner. Reconsideration of the rejected claims in view of the following remarks is respectfully requested.

Summary of the Office Action

In the instant Office Action, the Examiner has rejected previously presented claims 15 – 32 for being indefinite and allowed claims 33 and 34. By the present remarks, Applicant respectfully submits that all the rejections have been overcome, and respectfully requests reconsideration of the outstanding Office Action and allowance of the present application.

Interview Summary

Applicant gratefully acknowledges the courtesy extended to their representative in a telephone interview dated February 3, 2009. In the interview, Applicant's representative and the Examiner discussed the 35 U.S.C. § 112, 2nd paragraph rejections. More specifically, the operation of the tensioning and propelling rubber bands was discussed and the Examiner indicated he understood the operation of the tensioning and propelling rubber bands. Additionally, Applicant's representative noted that the § 112, 2nd rejection seemed an inappropriate rejection based on the Examiner's concerns. The Examiner stated that he believed the specification was clear and enabling.

Allowable Subject Matter

Applicant appreciates the Examiner's indication that claims 33 and 34 are allowed. However, Applicant respectfully submits that all of the claims are allowable for the following reasons.

Traversal of Rejection under 35 U.S.C. § 112, 2nd Paragraph

Applicant traverses the rejection of claims 15 – 32 under 35 U.S.C. § 112, 2nd paragraph for being indefinite. Specifically, the Examiner asserted it was "not clear how the parts are assembled to be able to propel a shaft; it is not clear how the propelling rubber bands are related to the tensioning rubber bands; it is not clear how the rubber bands are able to propel a shaft along the entire barrel." Applicant respectfully disagrees.

Applicant respectfully notes that 35 U.S.C. 112, 2nd paragraph states:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

According to MPEP 2173.02, the test for definiteness under 35 U.S.C. 112, second paragraph, is whether "those skilled in the art would understand what is claimed when the claim is read in light of the specification." *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1576, 1 USPQ2d 1081, 1088 (Fed. Cir. 1986). Moreover, definiteness of claim language must be analyzed, not in a vacuum, but in light of: (A) The content of the particular application disclosure; (B) The teachings of the prior art; and (C) The claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made.

Claim 15 recites, in pertinent part:

> . . . a barrel extending to a head;
> propelling rubber bands and tensioning rubber bands; and
> pulleys, located at the head, arranged to guide the propelling rubber bands to pass from a top of the barrel to an underside of the barrel, wherein the shaft is propelled along an entire length of the barrel.

Moreover, in contrast to 35 U.S.C. § 112, 2nd paragraph, which is directed to whether the terms recited in the claims are clear, the Examiner's comments indicate his concerns are about how the invention works, which is properly addressed under 35 U.S.C. § 112, 1st paragraph. As noted above, the Examiner acknowledged that the specification is proper under 35 U.S.C. § 112, 1st paragraph.

Thus, the Examiner appears to have misapplied 35 U.S.C. § 112, 2nd paragraph. In particular, the Examiner has not (nor can he) identify any terms recited in the claims that are unclear or unsupported by the original disclosure.

Applicant submits that all of the recited claim terms are clear and unambiguous and fully supported by the instant specification. For example, Applicant has reproduced paragraphs [0004] and [0029] – [0032] (as numbered in the substitute specification) below, which explain the recited claim terms and the operation of the instant invention, stating (emphasis added):

> **[0004]** By placing a system at the end of the gun (bars, pulleys, axles, rollers, sheaves, bearings, wheels) that allows the rubbers to pass from the top to the underside of the gun stock, and by loading rubber bands onto the shaft that are complemented by other rubber bands loaded onto the underside of the barrel at various anchor points, propulsion along the entire length of the stock is achieved. Compared to a conventional gun of equal length, one notes that propelling a shaft with a similar length, diameter, and number of rubber bands of the same type, a shaft propelled along the entire length of the barrel goes faster, farther, and with no recoil, compared to a shaft propelled along two thirds of the barrel. . . .
>
> **[0029]** The shaft (4) is catapulted along the entire length of the gun by the rubber bands (I, II). The wire (a) connecting the rubber bands that propels the shaft (4) ends its stroke one centimeter away from the end of the barrel against the stock, and the rubber bands are still tensioned at the

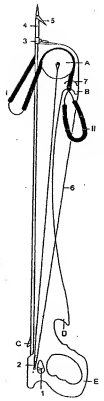
end of the stroke. The wire (a) ends up abutted against the top part of the stock, otherwise the shaft (4) would be destabilized if the wire (a) of the rubber bands (I, II) touched the heel of the shaft (4) while passing to the underside.

[0030] At the head of the barrel is a system that facilitates the passage and the tension of the rubber bands (I, II) from the top to the underside of the gun. This system can consist of axles, bars, pulleys, rollers, bearings, wheels, and/or sheaves. It is attached of screws, threaded bolts, axles, tubes, washers, and/or nuts.

[0031] For practical purposes, a rubber band of very large cross-section (I) is loaded onto the shaft (4), passed through the pulleys (A) and joined on the underside to multiple rubber bands (II) (one, two, three or more) with a diameter smaller than the rubber bands at the top and of various lengths to allow for better elastic recovery, ease of loading, and power.

[0032] The system for attaching the rubber bands (I, II) to the stock (B-D) can come in various forms depending on whether it is the wire (a) that joins the rubber bands (I, II) or their bodies that are anchored. Catches, which are either fixed or adjustable (mounted on a rail), or large notches, serve as bearing points. For the propelling band (I), the lower end of the stock can serve as a direct bearing point (B); in this case, the barrel extends further past the pulleys. The underside rubber bands (II) can be joined to the rubber band (I) either by the rubber band body or by the wire (a). The pulleys at the barrel end can be mounted in series (Fig. 5), in parallel (Fig. 6), or in parallel series (Fig. 7) to increase the number of rubber bands. If the number of rubber bands on the shaft and underneath the stock is increased, thus supercharging the rubber bands, one will use catches as bearing points and the rubber bands will have a connecting wire (a) at each end.

Additionally, Applicant has reproduced Figure 1 of the instant application below, which provides support for the recited claim terms and illustrates the assembly and relationship of the propelling rubber band (I) and the tensioning rubber band (II).



In light of the above, Applicant respectfully submits that those skilled in the art, after reviewing the specification and claims, would understand the subject matter recited in the claims and readily understand the scope of the claims. That is, Applicant submits the recited claim terms are clear and unambiguous, and that Figure 1 and paragraphs [0004] and [0029] – [0032] of Applicant's application provide clear support for the recited claim terms.

With regard to the Examiner's inquiry of how the parts are assembled to be able to propel a shaft, as noted above, this inquiry is not directed to the clarity of the claim terminology under a 35 U.S.C. § 112, 2nd paragraph rejection. Applicant notes the specification describes "how" the invention works, while the claims define the scope of the embodiments of the invention. In any event, Applicant notes that Figure 1 and paragraphs [0004] and [0029] – [0032] clearly explain

how the parts are assembled to be able to propel a shaft and fully describe the elements recited in the claims to define the scope of embodiments of the invention.

In view of the foregoing, the Examiner's attention is again directed to Figure 1 and paragraphs [0004] and [0029] – [0032], which show how the propelling rubber bands are related to the tensioning rubber bands and how the rubber bands are able to propel a shaft along the entire barrel.

Applicant respectfully notes the Examiner's sole rejection did not provide significant detail as to why the Examiner considered claim 15 indefinite. However, Applicants submit they have made a genuine effort to address the Examiner's concerns with regards to the indefiniteness rejection.

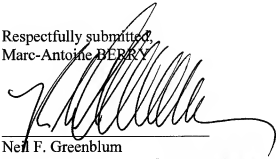
Thus, for the above reasons, Applicant submits that claim 15 is not indefinite. Accordingly, Applicant respectfully requests the rejection of claims 15 – 32 be reconsidered and withdrawn.

CONCLUSION

In view of the foregoing remarks, it is submitted that the pending rejection has been discussed and traversed. Accordingly, reconsideration of the outstanding Office Action and allowance of the present application and all of the claims therein are respectfully requested and now believed to be appropriate.

The Commissioner is hereby authorized to charge and fees necessary for the consideration of this paper to deposit account 19-0089.

Respectfully submitted,
Marc-Antoine BERRY



Neil F. Greenblum
Reg. No. 28,394

Robert W. Mueller
Reg. No. 35,043

GREENBLUM & BERNSTEIN, P.L.C.
1950 Roland Clarke Place
Reston, VA 20191
(703) 716-1191